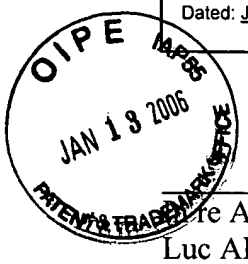
I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV 739862323 US, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: January 13, 2006 Signature: _____ (Leah Kjellen)



Docket No.: 514442002300
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Luc ADAM et al.

Application No.: 09/934,455

Filed: August 22, 2001 Art Unit: 1638

For: GENES FOR MODIFYING PLANT TRAITS IV Examiner: D. Kruse

PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM FOR BENEFIT UNDER 37 C.F.R. 1.78(a)(3)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam or Sir:

Applicants respectfully request the acceptance of the unintentionally delayed claim of benefit set forth in the Supplemental Application Data Sheet, included herewith.

In accordance with 37 C.F.R. 1.78(a)(3), this petition to accept an unintentional delayed claim for benefit is being filed with the following:

A) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2), 1.78(a)(5), which is set forth in the Supplemental Application Data Sheet and the amendment to the Specification, filed herewith;

B) a surcharge under 37 C.F.R. 1.17(t), which is set forth in the attached fee transmittal form; and

C) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional, which is set forth below.

01/18/2006 EAREGAY1 00000004 031952 09934455
01 FC:1454 1370.00 DA

Statement of Facts

1. Applicants filed the instant application on August 22, 2001 with a Specification containing the following first paragraph:

> This application claims priority benefit of: prior U.S application entitled "Plant Trait Modification III," serial no. 60/227,439, filed August 22, 2000; prior U.S. application entitled "Genes for Modifying Plant Traits," attorney docket number MBI-022, serial no. _____, filed November 16, 2000; and prior U.S. application entitled "Genes for Modifying Plant Traits II," serial no. 09/837,944, filed April 18, 2001. The entire content of each of these applications is hereby incorporated by reference.

2. As indicated in the USPTO records accessible through the Patent Application Information Retrieval System, the U.S. application originally entitled "Genes for Modifying Plant Traits" with attorney docket number MBI-022, filed November 16, 2000, is Application No. 09/713,994.

3. On December 28, 2001, Applicants transmitted a Declaration for Patent Application claiming priority under 35 USC § 119(e) to Application No. 60/227,439, filed August 22, 2000, and under 35 USC § 120 to Application Nos. 09/713,994, filed November 16, 2000, and 09/837,944, filed April 18, 2001.

4. On August 18, 2004 a Notice of Abandonment was mailed in the instant application for failure to timely respond to an Office Action of January 29, 2004.

5. The priority claim to the two prior applications, 09/713,994 and 09/837,944, as presented in the original application, did not comply with 35 USC § 120 and 37 CFR § 1.78(a)(2)(i) in that it did not state the specific relationship of the the applications, i.e. that the instant application is a continuation-in-part of Application No. 09/713,994, filed November 16, 2000, and that the instant application is a continuation-in-part of Application No. 09/837,944, filed April 18, 2001.

6. The instant application stands abandoned.

Remarks to the Petition

Applicants believe this Petition to Accept an Unintentionally Delayed Claim for Benefit under 35 U.S.C. § 120 satisfies the requirements of 37 CFR 1.78(a)(3).

The instant application was filed after November 29, 2000. The period specified in 37 CFR 1.78(a)(2)(ii) expired on March 16, 2002 with respect to U.S. Application No. 09/713,994, filed November 16, 2000 and expired on August 18, 2002 with respect to U.S. Application No. 09/837,944, filed April 18, 2001. Therefore, the instant petition is made after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii), with respect to the delayed priority claims.

The instant petition is accompanied by a Supplemental Data Sheet setting forth the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i). The instant petition is also accompanied by an Amendment under 37 CFR 1.121 setting forth the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i).

The instant petition is accompanied by the surcharge of $1,370.00, set forth in 37 CFR 1.17(t).

The instant petition contains, below, a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

Therefore, Applicants respectfully requests that this Petition to Accept an Unintentionally Delayed Claim for Benefit, made under 37 CFR 1.78(a)(3), be accepted and that the list of domestic priority data for the instant application be changed to reflect that the instant application is a continuation-in-part of Application No. 09/713,994, filed November 16, 2000 and that the instant application is a continuation-in-part of Application No. 09/837,944, filed April 18, 2001.

The undersigned hereby states that the entire delay between the date the claim was due under 37 C.F.R. 1.78(a)(2) and the date the claim was filed was unintentional.

In the unlikely event that the transmittal letter is separated from this document and/or the Patent Office determines that an extension and/or other relief is required, Applicants petition for any

required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **514442002300**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: January 13, 2006

Respectfully submitted,

By Michael R Ward

Michael R. Ward
Registration No.: 38,651

MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
Telephone: (415) 268 -6237
Facsimile: (415) 268-7500

OIPE IAP85
JAN 19 2006
PATENT & TRADEMARK OFFICE

Supplemental Application Data Sheet

Application Information

Application No::	09/934,455
Application Type::	Regular
Subject Matter::	Utility
Suggested Group Art Unit::	1638
CD-ROM or CD-R?::	Yes
Sequence submission?::	Yes
Computer Readable Form (CRF)?::	No
Title::	GENES FOR MODIFYING PLANT TRAITS IV
Attorney Docket Number::	514442002300
Request for Early Publication?::	No
Request for Non-Publication?::	No
Total Drawing Sheets::	No
Small Entity?::	No
Petition included?::	No
Secrecy Order in Parent Appl.?::	No

Applicant Information

Applicant Authority Type::	Inventor 1
Primary Citizenship Country::	Canada
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Country of Residence::	US
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City of mailing address::	Hayward
State or Province of mailing address::	California
Postal or Zip Code of mailing address::	94545

Applicant Authority Type::	Inventor 2
Primary Citizenship Country::	US
Status::	Full Capacity
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Family Name::	KEDDIE
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Country of Residence::	US
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City of mailing address::	San Mateo
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Postal or Zip Code of mailing address::	94403

Applicant Authority Type::	Inventor 3
Primary Citizenship Country::	US
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Postal or Zip Code of mailing address::	94546

Applicant Authority Type::	Inventor 4
Primary Citizenship Country::	Spain
Status::	Full Capacity
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Family Name::	RIECHMANN
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Country of Residence::	US
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City of mailing address::	Oakland
State or Province of mailing address::	California
Postal or Zip Code of mailing address::	94611

Applicant Authority Type::	Inventor 5
Primary Citizenship Country::	US
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Family Name::	JIANG
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Postal or Zip Code of mailing address::	94555

Applicant Authority Type::	Inventor 6
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Given Name::	Jacqueline
Family Name::	HEARD
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Country of Residence::	US
Street of mailing address::	810 Guilford Avenue
City of mailing address::	San Mateo
State or Province of mailing address::	California
Postal or Zip Code of mailing address::	94402

Applicant Authority Type::	Inventor 7
Primary Citizenship Country::	US
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Family Name::	PILGRIM

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Country of Residence::	US
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City of mailing address::	Fremont
State or Province of mailing address::	California
Postal or Zip Code of mailing address::	94536

Applicant Authority Type::	Inventor 8
Primary Citizenship Country::	US
Status::	Full Capacity
Given Name::	Arnold
Family Name::	DUBELL
City of Residence::	San Leandro
Country of Residence::	US
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City of mailing address::	San Leandro
State or Province of mailing address::	California
Postal or Zip Code of mailing address::	94578

Applicant Authority Type::	Inventor 9
Primary Citizenship Country::	United Kingdom
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Given Name::	Oliver
Family Name::	RATCLIFFE
City of Residence::	Oakland
Country of Residence::	US
Street of mailing address::	814 East 21st Street
City of mailing address::	Oakland
State or Province of mailing address::	California
Postal or Zip Code of mailing address::	94606

Applicant Authority Type::	Inventor 10
Primary Citizenship Country::	US

Status::	Full Capacity
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Family Name::	REUBER
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Country of Residence::	US
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City of mailing address::	San Mateo
State or Province of mailing address::	California
Postal or Zip Code of mailing address::	94402

Applicant Authority Type::	Inventor 11
Primary Citizenship Country::	US
Status::	Full Capacity
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Family Name::	YU
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Country of Residence::	US
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City of mailing address::	Berkeley
State or Province of mailing address::	California
Postal or Zip Code of mailing address::	94706

Applicant Authority Type::	Inventor 12
Primary Citizenship Country::	Colombia
Status::	Full Capacity
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Family Name::	PINEDA
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Country of Residence::	US
Street of mailing address::	4060 9th Place
City of mailing address::	Vero Beach
State or Province of mailing address::	Florida
Postal or Zip Code of mailing address::	32960

Correspondence Information

Correspondence Customer Number:: 47334

Representative Information

Representative Customer Number:: 47550

Domestic Priority Information

Application::	Continuity Type::	Parent Application::	Parent Filing Date::
This Application	An application claiming the benefit under 35 USC 119(e)	60/227,439	August 22, 2000
This Application	Continuation-in-part of	09/713,994	November 16, 2000
This Application	Continuation-in-part of	09/837,944	April 18, 2001

Foreign Priority Information N/A

Assignee Information

Assignee name::	Mendel Biotechnology, Inc.
Street of mailing address::	21375 Cabot Boulevard
City of mailing address::	Hayward
State or Province of mailing address::	California
Country of mailing address::	US
Postal or Zip Code of mailing address::	94545

OIPE IAP85 JAN 19 2006 PATENT & TRADEMARK OFFICE

PTO/SB/17 (12-04)
Approved for use through 7/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no person are required to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) **1,370.00**

Complete if Known	
Application Number	09/934,455
Filing Date	August 22, 2001
First Named Inventor	Luc ADAM
Examiner Name	D. Kruse
Art Unit	1638
Attorney Docket No.	514442002300

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 03-1952 Deposit Account Name: Morrison & Foerster LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, **except for the filing fee**

☒ Charge any additional fee(s) or any underpayment of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fees Paid ($)**
Utility	300	150	500	250	200	100	n/a
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	**Fee ($)**	**Small Entity Fee ($)**
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims	**Extra Claims**	**Fee ($)**	**Fee Paid ($)**
_____ - 20 =	0	x 50.00	= n/a

Multiple Dependent Claims

Fee ($)	**Fee Paid ($)**
180.00	0.00

Indep. Claims	**Extra Claims**	**Fee ($)**	**Fee Paid ($)**
_____ - 3 =	0	x 200.00	= n/a

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	**Extra Sheets**	**Number of each additional 50 or fraction thereof**	**Fee ($)**	**Fee Paid ($)**
_____ - 100 =	_____ /50	_____ (round up to a whole number) x	_____ =	n/a

4. OTHER FEE(S)

	Fees Paid ($)
Non-English Specification, $130 fee (no small entity discount)	0.00
Other: **1454 Petition for Unintentional Delayed Claim for Priority**	**1,370.00**

SUBMITTED BY

Signature	Michael R. Ward	Registration No. (Attorney/Agent)	38,651	Telephone	(415) 268-6237
Name (Print/Type)	Michael R. Ward			Date	January 19, 2006